

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-218060.2 DATE: February 28, 1985

MATTER OF: United Technical Products, Inc.--  
Request for Reconsideration

DIGEST:

When protest initially is filed with the contracting agency before bid opening, opening without agency response is itself initial adverse agency action, and protest to GAO must be filed within 10 working days thereafter.

United Technical Products, Inc. requests that we reconsider United Technical Products, Inc., B-218060, Feb. 5, 1985, 85-1 CPD ¶ \_\_\_\_. In that decision we found untimely United's protest alleging that a purchase description for anti-static carpets contained in General Services Administration (GSA) solicitation No. FNP-F3-1577A, seeking Federal Supply Schedule contractors for this and related flooring items, unduly restricted competition.

We affirm the prior decision.

In our original decision, we dismissed United's protest because it had not been filed with our Office within 10 days after United learned of initial adverse action on the same protest to GSA, as required by our Bid Protest Regulations, § 21.2(a)(2), 49 Fed. Reg. 49,417 (1984) (to be codified at 4 C.F.R. § 21.2(a)(2)). In its request for reconsideration, United contends that there was no adverse agency action until January 15, 1985, when GSA told its sales manager that written statements concerning the allegedly restrictive specifications would not be considered and that the agency would move toward awarding contracts.

United has misinterpreted our use of the term "initial adverse agency action." When a bidder lodges a protest with the agency before bid opening, alleging an impropriety apparent in an invitation for bids, and the agency proceeds to bid opening without acknowledging the protest, bid opening itself is "initial adverse agency action." Leon's Auto Repair, B-215625, July 20, 1984, 84-2 CPD ¶ 74. In fact, "the opening of bids" is explicitly identified in our

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Bid Protest Regulations as an adverse agency action. See  
§ 21.0(e), 49 Fed. Reg. 49,419.

United notified GSA of the alleged impropriety on April 23, 1984; bid opening was May 16, 1984. United did not protest to our Office until January 24, 1985, considerably more than 10 days thereafter. Accordingly, we find no error in the prior decision, which is hereby affirmed.

*Seymour Efros*

Seymour Efros  
Associate General Counsel